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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of DANIEL and TRACY DUCHANIN.	
DANIEL DUCHANIN, Appellant, v. TRACY DUCHANIN, Respondent.	E046160 (Super.Ct.No. SBFSS92356) OPINION

APPEAL from the Superior Court of San Bernardino County. Brian Saunders, Judge. Affirmed.

Dan Duchanin, in pro. per., for Appellant.

Law Office of Edmund I. Montgomery and Edmund L. Montgomery for Respondent.

I. Introduction

Daniel Duchanin initiated this action to terminate his marriage with Tracy

Duchanin. They had two children. Daniel is a lawyer, practicing family law. Tracy worked in Daniel's office during their marriage handling the accounting for the office.

The dissolution of the marriage created a major conflict between the parties not only because of the dissolution itself but also because of issues regarding the accuracy of Tracy's accounting.

The parties entered into a lengthy dissolution agreement, prepared by Tracy's lawyer, which required Tracy, as Daniel's accountant, to produce no later than August 15, 2006, all documents demanded by Daniel, "under verification." The parties waived all other discovery and did not exercise any further right to discover or to conduct any investigation beyond that already performed.

After the agreement was voluntarily entered into by the parties it generated substantial dispute because of Tracy's alleged failure to provide details of her accounting. Despite that disagreement over the alleged failure of Tracy to provide the accounting, we find that the agreement is enforceable.

II. The Duchanin Law Firm

Daniel started his own law firm in 1999. His wife, Tracy, was his accountant from the beginning. She was signatory on the firm accounts, received, organized and stored all financial data relating to the business and also maintained the personal records of the parties. She prepared financial statements, maintained a filing system which included storing the material in their garage or shed at their home. Tracy signed the checks, maintained the checkbook register and the credit cards personally and for the business.

Daniel asserts that when the marriage terminated he was excluded from the home and had no access to financial records personally or for the business.

The "final judgment" entered into between the parties was executed by Daniel and Tracy on July 18, 2006. It consisted of 16 pages and included issues pertaining to child custody and visitation, child and spousal support, division of community property, agreement as to separate debt of the parties, and community debt with Daniel assuming the debts of his business, including state and federal tax obligations. The final judgment included a waiver of discovery rights but did include a provision that Tracy would produce, no later than August 15, 2006, all documents called for by Daniel. All other discovery was waived by the parties.

Daniel contends that Tracy did not produce documents permitting him to complete the final declarations of disclosure and that she brought a motion for entry of judgment even though she did not produce the documents he requested. His subsequent motion to set aside the judgment was denied.

Daniel also contends that he did not have information regarding the money generated by his law firm but agreed to pay child and spousal support of $3,500 per month, based upon Tracy's assertion that the Duchanin law firm generated enough income to pay that amount. Daniel contends that Tracy did not comply with the Final Judgment agreement by providing the discovery requests to substantiate her assertion as to the income of the law firm. Daniel now asserts that the information to support Tracy's assertions as to the income of the firm was incorrect. The Final Judgment prepared

between the parties was signed by them on July 18, 2006. The trial court subsequently signed the judgment at Tracy's request on January 25, 2007.

III. The Final Judgment Between the Parties.

Tracy and Daniel agreed on child support payments of $2,000 per month and spousal support totaling $1,500 per month plus 10 percent of Daniel's adjusted gross income in excess of $100,000 per year. All child support was to terminate when the children reached majority and spousal support was to continue until August 14, 2016, for Tracy. The parties agreed upon a division of the community property.

The disagreement between the parties occurred when Daniel sought an order requiring Tracy to produce all documents called for in his demand to produce documents, under verification, no later than August 15, 2006. The agreement had been executed by the two parties on July 18, 2006. On October 4, 2006, Daniel filed a motion asking the trial court to require Tracy to provide records pertaining to his business, including personal accounts, credit cards, valuation of investment accounts, and insurance policies. His request was heard on December 5, 2006, by Judge Brian D. Saunders, who ultimately executed the final judgment order on January 25, 2007, and denied Daniel's motion to set aside the judgment on June 27, 2008.

IV Appellant's Claims

Daniel claims that Tracy failed to comply with requirements in Family Code section 2107, subdivision (d) and therefore the judgment against him should be set aside. Family Code section 2107, subdivision (d) requires the court set aside the judgment if the parties have failed to comply with the disclosure requirements. As a result, Tracy's first

request to enter judgment in October 2006 was denied by Commissioner Michael Gassner.

Daniel claims that his wife failed to provide the financial documents that were set forth in the settlement agreement of July 18, 2006. Those documents primarily involved the business and personal documents she prepared for Daniel's law firm and those involving family finances. Daniel examined Tracy before Judge Saunders on December 5, 2006, at which time she asserted under oath that she had provided all documents requested by Daniel.

Daniel contends that the lack of business and financial data provided by Tracy allowed her to mislead him as to the true financial picture of his business and private life. He contends that when he hired a new accountant for his business, he learned for the first time that that his business was operating at a loss of $50,000 in 2006 alone. Daniel attributes the problem to Tracy's extrinsic fraud. He asserts that the Final Judgment between himself and Tracy was based upon his understanding that Tracy's analysis of the income of his business was accurate and evidence to the contrary requires the judgment against him be set aside.

Defendant relies upon the case of *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261. In that case the court found that an advertisement for the sale of a car at a mistaken price allowed the seller to rescind the purchase. Defendant's reliance upon that *Donovan* case is not helpful. In that case the plaintiff sought to enforce a sales price on an automobile which the seller had accidentally priced by the owner at a price lower than the actual sales price. The trial court found it would be unconscionable to require the seller to

accept a lower price from the plaintiff. Daniel relies upon the *Donovan* case to assert that there was a mistake of fact, consisting of a fraudulent portrait of community income, expenses, assets and debts hatched by Tracy which should not be allowed.

Daniel asserts that the judgment in this case was obtained by fraud. He claims that he placed his trust on Tracy to comply with the agreement they had reached which required her to produce documents called for in his demand. That right was in lieu of taking depositions, submitting interrogatories, requesting admissions and other rights of discovery. He therefore alleges he was fraudulently prevented from participating in the presentation of his case. Daniel also claims that counsel for Tracy fraudulently prevented him from fully presenting his case and defrauded the trial court by entering a judgment in favor of Tracy which he would not have entered had the Judge known the true facts.

Finally, Daniel contends that the judgment should be set aside because there was no final declaration of disclosure from the parties. The subsequent judgment was granted based on Tracy's oral motion and granted by Judge Saunders.

V. Tracy's Claims

Tracy denies that the final judgment is appealable because under Rules of Court rule 8.204(a)(2) Daniel must state in his opening brief the nature of the action, the relief sought in the trial court, the judgment appealed from, why the order appealed from is appealable, and provide a summary of the significant facts limited to the matters in the record. The record is unclear whether Daniel complied with the requirements of rule 8.204(a)(2) and its provisions. Daniel's table of authorities does not even refer to rule 8.204(a).

As Tracy notes, to the extent there are issues of credibility, they are for the trier of fact, not the appellate court, and all factual issues will be viewed most favorably to the prevailing party.

This case was based upon a stipulated judgment between the parties which among other facts provided that Tracy would provide Daniel all of the documents called for in Daniel's demand to produce documents, under verification. Tracy asserts that there is not an appealable judgment from which Daniel can now appeal.

On December 5, 2006, Judge Saunders heard, at the request of Daniel, testimony from Tracy regarding her knowledge of the identity and location of documents pertaining to Daniel's law office and his personal finances. Tracy testified that all of the financial documents pertaining to the office had been delivered to Daniel. She did testify that she still had some paid bills in a box in the garage which she had discussed with Daniel but which he had not picked up.

Tracy notes that the record on appeal is missing a substantial part of the record below. In that connection, although ordered to file a declaration of disclosure under Family Code sections 2104, 2105, and 2106, there is no evidence Daniel complied.

Daniel claims that he had moved to set aside the stipulated judgment between the parties, but if there was such a pleading, it has not been provided in Daniel's limited number of documents on appeal. Code of Civil Procedure section 473, subdivision (b) requires a copy of the answer or other pleading proposed to be filed. The failure to provide the pleading precludes the grant of the request. Nor was Daniel's application accompanied by a copy of the proposed order to set aside his prior stipulation.

In the case of *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625, referred to in Tracy's response, the court required the moving party to show a satisfactory excuse for his default, and his diligence in making a motion after discovery of the default. Daniel provided no such evidence. In *Estate* of *Wolper* (1956) 146 Cal.App.2d 249, 251 the court stated "While it is true that the court has the power to relieve a party from default suffered through inadvertence, surprise, excusable neglect or mistake, these words are not meaningless, and the party requesting such relief must affirmatively show that the situation is one which clearly falls within such category." Daniel has not provided any basis for affirmative relief for his default.

"(A) party who seeks relief under [Code of Civil Procedure] section 473 on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable 'because the negligence of the attorney . . . is imputed to his client and may not be offered by the latter as a basis for relief." (*Carroll v. Abbott Laboratories, Inc* (1982) 32 Cal.3d 892, 898.)

There is no evidence in this case that Daniel claimed mistake before moving for relief. Relief was therefore properly denied nor did Daniel furnish an adequate record pertaining to the relief he requested. His claim on appeal must be resolved against him. (*See Rancho Santa Fe Association v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs.

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s/Richli
J.

We concur:

s/McKinster
Acting P. J.

s/King
J.